

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
AUTOMATION POOLS, INC.)

Appearances:

For Appellant: Richard Hoefflin
Attorney at Law

For Respondent: Jean Ogrod
Counsel

O P I N I O N

This appeal is made pursuant to section 26075, subdivision (a) of the Revenue' and Taxation Code from the action of the Franchise Tax Board on the protest of Automation Pools, Inc. against a denial of claim for refund of penalties totalling \$4,540. 64 for the income year ended June 30, 1975.

Appeal of Automation Pools, Inc.

Automation Pools, Inc. a California corporation, commenced doing business in 1970. Appellant was an accrual basis taxpayer, filing its franchise tax returns on the basis of a fiscal year ending June 30.

Appellant requested and was granted extensions of time until March 15, 1976 for filing a return for the income year ended June 30, 1975. That return was not filed until August 15, 1976 and reflected a liability of \$16,470.00, estimated tax payments of \$200.00 and a balance due of \$16,270.00. The estimated tax payment had been made on March 15, 1975. The balance due shown on the return was not paid until November 8, 1976.

Respondent determined that the estimated tax paid was less than 80 per cent of the final tax liability and therefore assessed a penalty of \$473. 14 against appellant for underpayment of estimated tax. Further, respondent assessed a late filing penalty of \$4,067. 50 because the 1975 return was filed five months after the extended due date.

On January 26, 1977, appellant paid the assessed penalties in question and filed a claim for refund of those amounts on the grounds that reasonable cause existed for the underpayment of estimated tax and the late filing of the return. The claim for refund was denied and this timely appeal followed.

There are two questions presented: '(1) whether respondent properly imposed a penalty for underpayment of estimated tax and (2) whether appellant has established that its failure to file a timely return was due to reasonable cause and not willful neglect.

Payment of estimated franchise tax is governed by Revenue and Taxation Code section 25563. The term "estimated tax" means the amount which the corporation estimates as its franchise tax liability but the minimum tax is \$200.00 (Rev. & Tax. Code, § 25561). The penalty for underpayment of estimated tax is imposed by section 25951, which provides:

In case of any underpayment of estimated tax, except as provided in Section 25954, there shall be added to the tax for the taxable year an amount determined at the rate of 12 percent per annum upon the amount of underpayment (determined under Section 25952) for the period of underpayment (determined under Section 25953). (Emphasis added.)

Anneal of Automation Pools, Inc.

Appellant has not challenged the computation of the amount or the period of the underpayment. Therefore, the penalty for underpayment was properly imposed unless appellant qualifies for relief under one of the exceptions set forth in section 25954. Basically, that section provides that the penalty shall not be imposed if the total amount of estimated tax payments made by each installment due date equals or exceeds the required amount due by such date based on the preceding income year tax liability or the current income year annualized tax liability..

Appellant does not argue that any of the above exceptions is applicable, but rather argues that it should be relieved of the penalty because it anticipated having no tax liability beyond the minimum tax, which was prepaid on March 15, 1975. Appellant alleges that its accountant had so advised the corporation and contends that it was reasonable to rely on the accountant's analysis. The cases cited by appellant in support of its position are based on "reasonable cause" provisions in the relevant statutes. With respect to the instant case, however, it is settled law that relief from the penalty for underpayment of estimated tax is not available upon a showing of reasonable cause and lack of willful neglect, or extenuating circumstances, (See Appeal of Decoa, Inc., Cal. St. Bd. of Equal., April 5, 1976; see also Appeal of Cerwin-Vega International, Cal. St. Bd. of Equal., Aug. 15, 1978.) Therefore, absent evidence that the exceptions provided in section 25954 apply to appellant, we must conclude that respondent properly assessed the penalty for underpayment of estimated tax.

The penalty for late filing was imposed pursuant to Revenue and Taxation Code section 25931, which provides, in part:

If any taxpayer fails to make and file a return required by this part on or before the due date of the return or the due date as extended by the Franchise Tax Board, then, unless it is shown that the failure is due to reasonable cause and not due to willful neglect, 5 percent of the tax shall be added to the tax for each month or fraction thereof elapsing between the due date of the return and the date on which filed, but the total addition shall not exceed 25 percent of the tax.

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Appellant has the burden of proving that the late filing of its tax return was due to reasonable cause and not due to willful neglect. (C. Fink Fischer, 50 T. C. 164 (1968).) Both conditions must exist. (Rogers Hornsby, 26 B. T. A. 591. (1932).) It does not appear that appellant willfully neglected to file a timely return.. Thus, the question remains whether the late filing was due to reasonable cause. Appellant attributes the delay to its accountant's mistaken determination that no tax would be due for the income year in question because of the availability of a carryover net operating loss deduction. Nevertheless, appellant did not file its return until 5 months after the extended due date of March 15, 1976, which was nearly a year after the original due date of September 15, 1975. At the oral hearing in this matter, appellant's representative stated that the sale of corporate assets which produced appellant's taxable income. occurred during the extension period granted for filing. We believe that the exercise of ordinary business care and prudence would have prompted appellant to file a return at the end of that period, rather than five months later. While it may be that appellant's accountant was unaware that no carryover net operating loss deduction was available under California law, the fact remains that appellant was aware of the sale of its assets and the expiration of the extension period. The requirement of filing a return in this situation appears, to us to be a fundamental matter which appellant should have recognized. (Cf. , Appeal of Estate of Anna Armstrong, Deceased, Cal. St.. Bd. of Equal. , Oct. 27, 1964.) Therefore, we must conclude that no reasonable cause existed for the late filing and the penalty was properly imposed.,.

For these reasons, respondent's action must be sustained.

O R D E R


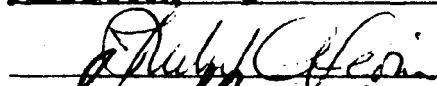
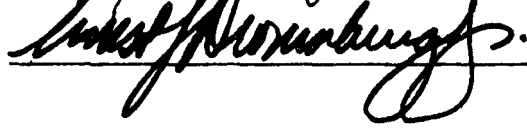


Pursuant to the views expressed in' the opinion of .the board on file in this proceeding, and good cause appearing therefor,'

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 26077 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Automation Pools, Inc. against a denial of claim for refund of penalties totalling

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\$4,540.64 for the income year ended June 30, 1975, be and the same is hereby sustained.

Done at Sacramento, California, this 14th day of
November, 1979, by the State Board of Equalization.

, Chairman
, Member
, Member
, Member
, Member